

BEFORE THE  
UNITED STATES DEPARTMENT OF HOMELAND SECURITY  
UNITED STATES COAST GUARD

AND THE  
UNITED STATES DEPARTMENT OF TRANSPORTATION  
MARITIME ADMINISTRATION

WASHINGTON, D.C.

Docket No. USCG-2003-14472  
Docket No. MARAD 2003-15171

Vessel Documentation: Lease Financing for Vessels Engaged  
in the Coastwise Trade; Second Rulemaking

COMMENTS OF SALTCHUK RESOURCES, INC.

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Pursuant to the notice published at 69 Fed. Reg. 5403 (February 4, 2004), Saltchuk Resources, Inc. ("Saltchuk"), through its attorneys, Garvey Schubert Barer, hereby submits these comments supporting MARAD's and the Coast Guard's efforts to enforce Congress's long-standing policy that United States citizens must effectively control vessels employed in domestic trades. Saltchuk also supports and joins in the comments submitted on behalf of The American Waterways Operators and of the Maritime Cabotage Task Force in this proceeding and reiterates the comments it submitted in MARAD Docket No. 2002-12842 dated October 1, 2002.

#### **Description Of Saltchuk And Its Interests In This Proceeding**

Saltchuk is a privately owned holding company for Pacific Northwest and domestic maritime businesses.

- Through its subsidiary **American Shipping Group**, Saltchuk owns (a) Interocean Uglan Management Corporation, a Philadelphia-based ship management company that provides services for U.S. flag carriers including MARAD, (b) Sea Star Line, which operates two combination roll on/roll off and lift on/lift off vessels between Florida and Puerto Rico, and (c) Totem Ocean Trailer Express, which operates two new 650 FEU RO/RO vessels between Tacoma, Washington and Anchorage, Alaska and which has two RO/RO vessels on charter to the military supporting Operation Iraqi Freedom and a third on charter to Matson for service to Hawaii.
- Through its subsidiary **Marine Resources, Inc.**, Saltchuk owns (a) AmNav Maritime Services, (b) Foss Maritime Company, (c) Hawaiian Tug & Barge, (d) Sea Coast Towing and (e) Young Brothers Ltd., which are independently operated tug and barge companies that provide harbor services, towing, tanker escorts, and related services on the West and Gulf Coasts, and in Alaska and Hawaii.

In addition, Saltchuk distributes heating oil and other petroleum products to small and isolated communities in Southeast Alaska and the Aleutian Islands through its subsidiary, Delta Western.

Combined, these companies and their subsidiaries employ over 4500 workers, operate blue water vessels with over 7000 TEUs of capacity together with approximately 235 tugs and barges, manage vessels totaling over 650,000 dwt., and do business at ports on every coast of the United States.

Saltchuk strongly believes in the domestic maritime industry. In reliance on long-standing requirements of the Jones Act, last year TOTE took delivery of two new 650 FEU RO/RO ships that were built at National Steel and Shipbuilding Company's yard in San Diego and that were financed through Title XI. Without the requirements for U.S. construction, U.S. registry, and U.S. citizen ownership, Saltchuk would not have made its \$350 million investment in those ships, U.S. shipyard workers would not have built the ships, and Alaskans would not have the improved service the ships are providing. Saltchuk urges MARAD and the Coast Guard not to allow Saltchuk's investment to be jeopardized by erosion of Section 2 and applauds the agencies' efforts to preserve the delicate balance between allowing passive foreign investment in Jones Act vessels while assuring that effective control of those vessels and their commercial operations remains with Section 2 Citizens as intended by Congress.

## **Saltchuk's Position**

Except in the limited circumstances of grandfathered operations and carriage of proprietary cargo, Saltchuk opposes foreign control of a Jones Act vessel's economic use or operations, whether exercised through ownership or through any form or style of charter. It is the substance of the business relationship that matters, not the title or form of a charter.

Congress enacted Section 2 of the 1916 Act to maintain the security of the U.S. homeland's basic water infrastructure and to maintain a level playing field within Jones Act markets. If foreign interests were allowed to gain effective control of vessels that operate in those markets, such control would both compromise security and – by introducing other nations' tax and regulatory regimes – distort market forces and impair the level playing field. *See* U.S. Department of the Treasury – Office of Tax Policy, Corporate Inversion Transactions: Tax Policy Implications (May 2002)

Accordingly, Saltchuk supports MARAD's proposed change and also the second alternative proposed by the Coast Guard (sometimes also referred to as the (a)(9) option). This approach is narrowly focused and, assuming that an adequate definition of proprietary cargo can be developed, will solve the problems identified in the joint notice of proposed rulemaking without disrupting operations of foreign interests that are merely transporting their own cargo. It preserves the option of passive foreign

financial investment without compromising Section 2's requirement that vessels in Jones Act trades must be owned and effectively controlled by Section 2 citizens.

Saltchuk also recognizes the importance of protecting investments made in reliance on current law. Accordingly, Saltchuk does not oppose reasonable grandfathering provisions for investments made in reliance on prior interpretations of Section 12106(e).

Furthermore, Saltchuk emphasizes that its concern is with non-Citizens who are in the business of providing transportation services for hire to unaffiliated third parties – traditional common carriage. Saltchuk would not oppose reasonable provisions that would allow non-Citizens to own vessels transporting proprietary cargo for themselves, their affiliates or, in the case of a vessel pooling arrangement, other members of the pool.

### **Conclusion**

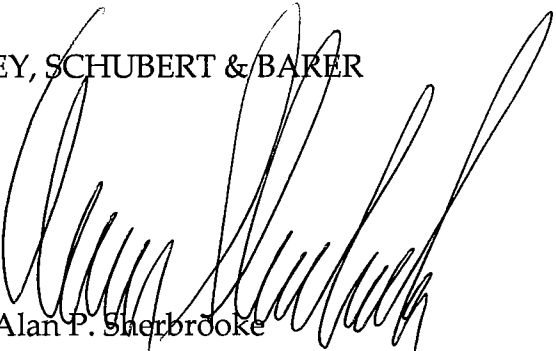
Saltchuk has invested hundreds of millions of dollars in the domestic maritime industry and expects to continue doing so in the future. Those investments are predicated, however, on the continued vigor of the Jones Act – including the Section 2 citizenship requirements. By adopting the proposed changes to 46 CFR Parts 67 and 221, and in particular by adopting the second alternative, MARAD and the Coast Guard will have taken important steps to preserve and effectuate Congress's intent in both Section 12106(e) and Section 2: The domestic maritime industry will have access to

foreign sources of capital when that capital is supplied as a passive financial investment and not as a thinly disguised effort by foreign interests to penetrate the Jones Act trades. At the same time, effective commercial participation in Jones Act markets will remain in the hands of bona fide United States Citizens under Section 2.

RESPECTFULLY SUBMITTED

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By



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